

11 FCC Rcd 1821, *1824; 1996 FCC LEXIS 242, **21

[x] MCI Friends Around the World WRLD 3.

Other Services

What language do you prefer? ☐ English ☒ Spanish

[ILLEGIBLE WORDS] Long Distance Service as my primary long distance carrier for the residential telephone number listed above. I authorize [ILLEGIBLE WORDS] my local telephone company of my choice.

[ILLEGIBLE WORDS] that I may choose only one long distance company per telephone number. I also understand that the local telephone company charges a small fee for this and any later change, and MCI will send me a \$ 5.00 certificate to offset this fee.

Signature Casimiro Gonzalez Date 07-03-95

[ILLEGIBLE WORDS] [**22] contact person to confirm your order. Note that you will be contacted Monday-Friday between 8:30 am & 5:00 pm E.T.

CONTACT NAME BEST TIME TO BE REACHED TELEPHONE NUMBER

2ND ITEM of Level 1 printed in FULL format.

In the Matter of MCI TELECOMMUNICATIONS CORPORATION

File No. ENF-96-01

FEDERAL COMMUNICATIONS COMMISSION

11 FCC Rcd 12632; 1996 FCC LEXIS 4590

June 21, 1996

ACTION: [**1] CONSENT DECREE

OPINIONBY: MULETA; O'NEIL

OPINION:

[*12632] 1. The Common Carrier Bureau ("Bureau") of the Federal Communications Commission ("FCC" or "Commission") and MCI Telecommunications Corporation ("MCI"), by their attorneys or authorized representatives, hereby enter into a Consent Decree terminating a FCC investigation concerning MCI's alleged apparent violation of the Commission's policies and rules regarding primary interexchange carrier ("PIC") conversions. n1 MCI is a common carrier that provides interstate and international interexchange telecommunications services pursuant to tariffs on file with the Commission.

n1 See 47 C.F.R. @ 64.1100; Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd 1038 (1992), recon. denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985); recon. denied, 102 FCC 2d 503 (1985); Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 935 (1985).

2. On January 23, 1996, the Bureau issued to MCI a Notice of Apparent Liability for Forfeiture. n2 The Bureau preliminarily determined that MCI had apparently violated Commission rules and orders by changing the PIC designated by Sandy Russo [**2] ("Russo") of Los Angeles, California, and Casimiro and Connie C. Gonzales (the "Gonzaleses") of Sylmar, California, without Russo's or the Gonzaleses' authorization. After reviewing the facts and circumstances surrounding the alleged violations, the Bureau found MCI apparently liable for forfeiture in the amount of eighty thousand dollars (\$ 80,000). The Bureau and MCI thereafter entered into consent negotiations and have agreed to terminate this proceeding pursuant to the terms and conditions set forth herein.

n2 MCI Telecommunications Corporation, Notice of Apparent Liability for Forfeiture, 11 FCC Rcd 1821 (Com. Car. Bur. 1996) ("NAL").

3. For the purposes of this Consent Decree the following definitions shall apply:

a. "Commission" or "FCC" means the Federal Communications Commission;

b. "Bureau" means the Common Carrier Bureau of the Federal Communications Commission;

[*12633] c. "MCI" means MCI Telecommunications Corporation, its successors and assigns;

11 FCC Rcd 12632, *12633; 1996 FCC LEXIS 4590, **2

d. "Parties" means MCI and the Bureau;

e. "Adopting Order" means an Order of the Bureau adopting the terms and conditions of this Consent Decree;

f. "PIC Change" is an order or request transmitted by an interexchange carrier to a [**3] local exchange carrier ("LEC") requesting a change of a customer's primary interexchange carrier ("PIC");

g. "Letter of Agency" or "LOA" means a written authorization signed by the customer authorizing a PIC change;

h. "Informal Complaint" or "Consumer Complaint" means a complaint filed with the Consumer Protection Branch of the Common Carrier Bureau's Enforcement Division under 47 C.F.R. @ 1.716.

4. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in an Adopting Order of the Bureau, and that adoption of such Order by the Bureau shall terminate the captioned proceeding.

5. The Parties agree that this Consent Decree shall become effective the date on which the Adopting Order is released by the Common Carrier Bureau. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission and any violation of the terms of this Consent Decree shall constitute a violation of a Commission Order entitling the Commission to exercise any and all rights and to seek any and all remedies authorized by law for the enforcement of [**4] a Commission Order.

6. MCI admits that the Commission has jurisdiction over it and the subject matter of this action.

7. MCI agrees to waive any further procedural steps and any rights it may have to seek judicial review or otherwise challenge or contest the validity of the Adopting Order or this Consent Decree.

8. MCI agrees to waive any rights it may have under any provision of the Equal Access to Justice Act, 5 U.S.C. @ 504.

9. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between MCI and the Commission of the above-captioned NAL proceeding but agree that this Consent Decree is not dispositive of the rights of any complainant who has filed an informal complaint against MCI and does not resolve those complaints or any matter(s) within the jurisdiction of any other federal agency.

[*12634] 10. The Parties agree that this Consent Decree is for settlement purposes and that MCI does not admit any alleged violation or liability for the specific acts described in the NAL or in any informal complaints received by the Commission on or before the effective date of this Consent Decree. Indeed, MCI expressly denies any such violation or liability.

11. [**5] MCI shall make a voluntary contribution to the United States Treasury in the amount of \$ 15,000 (fifteen thousand dollars) for each of the alleged unauthorized conversions resulting in a total payment of \$ 30,000

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(thirty thousand dollars) within 30 days of the effective date of this Consent Decree. Such contribution shall be made, without further protest or recourse, by certified check, cashier's check, or money order drawn to the order of the Federal Communications Commission, shall reflect "FCC File No. ENF-96-01, NAL/Acct. No. 616EF001," and shall be mailed to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

12. Notwithstanding paragraph 13, MCI agrees that it shall not submit to any LEC any PIC-change request unless MCI has complied with all Commission rules and orders, in effect or as they may be hereafter modified or amended, concerning PIC changes.

13. MCI has represented that as of February 16, 1996, it uses an independent third party to verify each and every PIC change for: (1) residential customers, except those PIC changes that are given to MCI by the local exchange carrier, those resulting from direct remit checks, those submitted by [**6] the customer directly via a business reply envelope, or those that result from the transactions listed in Attachment A; and (2) for small business customers that result from outbound telemarketing. MCI agrees that, by August 1, 1996, it shall extend mandatory third-party verification procedures to all PIC changes for residential and small business customers that result from the transactions listed in Attachment A. On August 31, 1996, MCI shall submit a report to the Bureau on the implementation status of its third-party verification program. On January 31, 1997, MCI agrees to submit a report to the Bureau on the effectiveness of its mandatory third-party verification program in reducing incidents of unauthorized conversion of consumers' primary interexchange carriers.

14. MCI agrees that within thirty (30) days of the effective date of this Consent Decree, MCI will send a written advisory to all companies currently under contract to act as sales distributors of MCI Dial 1 service instructing them that it is impermissible for sales representatives to sign a LOA on a customer's behalf and that the signature on the LOA must be that of the party authorized to make the PIC change. A copy [**7] of the written advisory will be submitted to the Bureau's Enforcement Division within ten (10) days of its distribution. MCI will further require the recipients of such advisories to acknowledge in writing within fourteen (14) days of receipt of the advisory that they received the document and understand its contents. As further described in paragraph 17 below, copies of these replies will be kept on file, subject to Commission inspection, for two (2) years beginning on the effective date of this Consent Decree.

15. MCI agrees that within ninety (90) days of the effective date of this Consent Decree, MCI will supplement its sales manuals as required to make clear that no sales representative may sign a LOA on a customer's behalf and that the signature on the LOA must be that of the party authorized to make the PIC change. Copies of the supplement to the sales [*12635] manuals will be submitted to the Bureau's Enforcement Division within ten (10) days of completion.

16. MCI agrees that within thirty (30) days of the effective date of this Consent Decree, MCI will advise its sales distributors and agents in writing that the submission of PIC-change orders bearing forged or unauthorized signatures [**8] may result in the termination of their distribution agreements with MCI. MCI will submit a copy of the written advisory to the

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Bureau's Enforcement Division within ten (10) days of its distribution.

17. For eighteen (18) months beginning on the effective date of this Consent Decree, MCI agrees to maintain and make available to the Bureau, within fourteen (14) days of the receipt of a written request from the Bureau, business records demonstrating compliance with the terms and provisions of this Consent Decree, including, but not limited to, advertisements, sales scripts, manuals or presentations, written advisories to sales distributors and agents and required responses to those advisories, Letters of Agency, PIC-change records, billing records, and all consumer complaints including those filed directly with MCI and those filed against MCI in any local, state, or federal jurisdiction served or otherwise submitted to MCI. The record of consumer complaints shall include the name, address and telephone number of each complainant, MCI's response, and the final disposition of each complaint. The Bureau will entertain any request made by MCI for an extension of time in which to comply with [**9] the Bureau's written request described herein.

18. MCI represents that it has satisfied the complaints filed with the Commission by Sandy Russo and Casimiro and Connie C. Gonzales that gave rise to the Bureau's NAL. See MCI Response to Russo Complaint, IC 95-370, dated January 18, 1996; and MCI Response to Gonzales Complaint, IC 95-23743, dated January 18, 1996.

19. In light of the covenants and representations contained in this Consent Decree, and in express reliance thereon, the Bureau agrees that adoption of this Consent Decree shall serve to resolve all allegations that are the subject of the NAL issued in the above-captioned proceeding without any finding of liability on the part of MCI. The Bureau further agrees that in the absence of substantial additional and material facts, the Bureau shall not on its own motion institute against MCI new proceedings of any kind arising out of the PIC changes submitted on behalf of Sandy Russo or Casimiro and Connie C. Gonzales.

20. The Bureau further agrees that in the absence of substantial additional and material facts, it shall not on its own motion institute forfeiture proceedings against MCI based on residential and small business customers' [**10] informal complaints of unauthorized LOA-generated PIC changes occurring before May 1, 1996. In addition, the Bureau agrees that in the absence of substantial additional and material facts, it shall not on its own motion institute forfeiture proceedings against MCI based on residential and small business customers' informal complaints of unauthorized PIC changes generated from those transactions listed in Attachment A occurring before August 1, 1996. Consumer complaints generated during these time periods will be served on MCI under the procedures and rules governing such complaints and MCI agrees to resolve these complaints to the extent required by the Communications Act and the Commission's rules and regulations. Except to the extent agreed herein, nothing in this Consent Decree shall prevent [*12636] the Commission from adjudicating future complaints filed against MCI, or from instituting a new investigation or enforcement proceedings against MCI in the event of future misconduct.

21. The Parties agree that the terms and conditions of this Consent Decree shall remain in effect for eighteen (18) months from the date of the Adopting Order. The Parties also agree that any provision of the [**11] Consent Decree, except for the provisions concerning third-party verification, affected by or inconsistent with any subsequent rule or order adopted by the

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Commission, will be superseded by such Commission rule or order.

FOR THE COMMON CARRIER BUREAU OF THE FEDERAL COMMUNICATIONS COMMISSION:

John B. Muleta
Chief, Enforcement Division

FOR MCI TELECOMMUNICATIONS CORPORATION:

Thomas F. O'Neil, III
Chief Litigation Counsel

APPENDIX: ATTACHMENT A

Residential sales:

Inbound Customer Service

Third Party Partner Marketing Sales (PIC changes submitted by the customer to an MCI marketing partner, which are then submitted by the marketing partner to MCI)

Small Business sales:

All sales channels (except PIC changes that are given to MCI by the LEC, those resulting from the customer executing a check, and those submitted by the customer directly via a business reply envelope)





MCI Telecommunications
Corporation

1801 Pennsylvania Ave.
Washington, D.C. 20006
202 887 2006
FAX: 202 887 3175

Donald J. Bardo
Director
Regulatory Law

RECEIVED

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COMMON CARRIER
ENFORCEMENT DIVISION
COMMON CARRIER BUREAU

July 23, 1996

John Muleta, Esq.
Chief, Enforcement Branch
Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Re: SNET Communications Act Violations

Dear Mr. Muleta:

Informal complaint is hereby made by MCI Telecommunications Corporation (MCI) against Southern New England Telephone Company (SNET) in connection with the latter's recent marketing solicitations, which violate Section 201(b) of the Communications Act of 1934 (the Act) in several material respects. In addition, these solicitations also violate new Section 251 of the Act, which was enacted in order to bring about competition in local monopoly markets. A copy of the offensive solicitations is appended to this complaint.

MCI is a common carrier engaged, among other things, in the provision of interstate and intrastate long distance telecommunications services. SNET is a monopoly telecommunications service provider offering, among other things, local exchange telephone service within the State of Connecticut and, as well, interstate and intrastate long distance services. MCI and SNET thus are competitors in connection with their furnishing of interstate and intrastate long distance services, and they are potential competitors in connection with the furnishing of local exchange service in Connecticut.

As the attachment demonstrates, SNET actively is engaged in soliciting consumers within Connecticut, where it is the near-exclusive provider of local exchange service, to sign up, first, for SNET "local and long distance service within and beyond Connecticut" — so-called "SNET All Distance" — and, then, to commit to a new SNET offering called "Carrier Choice Protection." The latter program, which is characterized as "free," purportedly allows SNET to deny other carriers their right to switch consumers away from SNET in the ordinary course of conducting their businesses. Thus, the latter solicitation, when signed by a consumer, "authorize[s] SNET to protect . . . phone line(s) that use SNET long distance service from being switched without [his/her] express written or verbal consent." Although the formalities appear to limit this restriction to "long distance service," the language in the solicitation itself is broader in reach and



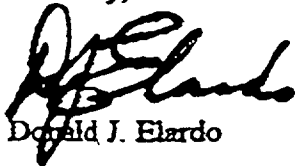
speaks to the changing of "local and long distance carriers." Clearly, it is SNET's goal not to allow any switch of Connecticut consumers from their SNET long distance service and, as well, from their SNET local exchange service when local service competition finally emerges in Connecticut.

Section 201(b) of the Act requires all carrier undertakings to be "just and reasonable." SNET's approach here, designed to capture long distance service in combination with the local exchange service that it monopolizes and then insulate itself from long distance competition, as well as potential local exchange service competition, is patently anti-competitive in intent and effect. The approach thus is unlawful because it violates the Congress' and the Commission's pro-competitive policies and goals in all telecommunications markets. Furthermore, the solicitation involving the "Carrier Choice Protection" program violates Section 201(b) because it is fundamentally deceptive. This is because, although consumers are told that the "freeze" occurs only in connection with long distance service, it is apparent that SNET intends also to freeze any change of local exchange service when competitive alternatives become available to Connecticut consumers. (By freezing "phone lines" as distinct from "long distance service," local service is covered because the same "lines" are used to provide both long distance and local service.) Consumers thus are being materially misled and will be unreasonably deprived of competitive alternatives for local services in the future under this SNET approach. SNET's objective of retaining its monopoly hold over local exchange service in the face of emerging competition, and the means it is taking to achieve that goal, is transparent under the circumstances and simply cannot be tolerated.

Finally, SNET's solicitations, as shown, introduce substantial confusion into the marketplace at a time when significant and complex telecommunications changes are occurring and will continue to occur. With this the case, the public interest requires that all steps be taken by the Commission to eliminate consumer confusion whenever it arises as a result of carrier undertakings designed to fuel such confusion.

In view of the foregoing, the Commission respectfully is requested to find and conclude that these SNET solicitations are unlawful, in plain violation of Sections 201(b) and 251 of the Act, because they are flatly at odds with the proper functioning of competitive markets. Accordingly, the Commission respectfully is requested to direct that SNET immediately cease from engaging in the practices complained of herein.

Sincerely,



Donald J. Elardo

Attachment

Authorization To Change/Confirm My Local/Long Distance Carriers

I want SNET All Distance™ for my local and long distance service within and beyond Connecticut.*

(please type or print as it appears on your phone bill)

Name _____

Street Address _____

City _____ State CT ZIP _____

Telephone (required) (____) _____

Additional telephone lines for this service:

1. _____

2. _____

3. _____

Signature* (required) _____

Date (required) _____

*With this signature, I authorize the following, as applicable:

- a change in my local carrier from my current carrier to Southern New England Telephone;
- a change in my in-state long distance carrier from my current carrier to Southern New England Telephone;
- a change in my out-of-state long distance carrier from my current carrier to SNET America, Inc.;
- the unblocking of my Carrier Choice Protection to make these switches possible;
- Southern New England Telephone to effect these changes on my behalf;
- Southern New England Telephone and SNET America, Inc. to be the sole providers for my long distance service within and beyond Connecticut (as indicated) for the phone numbers listed.

I understand that I may select per telephone number only one local carrier, only one in-state long distance carrier and only one out-of-state long distance carrier. I also understand that SNET will waive any fee for this change and that a fee may apply for any later change I request.



12-001

Get Free Carrier Choice Protection from SNET

And make sure your phone lines can't be switched without your say so!

Did you know that your local and long distance carriers can be changed without your direct request? To protect the SNET long distance service you have, just complete and return this form.

Life holds enough surprises without getting phone bills from companies you've never asked to do business with! With this free service, SNET makes sure you can't be switched unless you know about it and have given your permission first. It's your choice, and you don't want someone else making it for you.

☒ **YES, I Want SNET
Carrier Choice Protection.**

Signature* (required) _____

Name (please print) _____

Street Address _____

City _____ State CT ZIP _____

Date (required) _____

Telephone (required) (____) _____

Additional telephone lines for this service:

1. _____

2. _____

3. _____

*With this signature, I authorize SNET to protect my phone line(s) that use SNET long distance service from being switched without my express written or verbal consent. I understand that this protection is free from SNET.



12-001



Eugene J. Baldrate
Director - Federal Regulatory

August 5, 1996

John Muleta, Esq.
Chief, Enforcement Branch
Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: MCI Telecommunications
File #: 96-09734 (Incoming Team)
Notice of Informal Complaint: 7/24/96

Dear Mr. Muleta:

This in response to your Notice of Informal Complaint dated July 24, 1996, referenced above, which forwarded correspondence to the Commission by MCI Telecommunications, Inc. ("MCI").

MCI alleges that The Southern New England Telephone Company ("SNET") has violated Sections 201(b) and 251 of the Communications Act of 1934 ("the Act") by proactively soliciting customers to sign up for a "freeze" on any primary interexchange carrier ("PIC") changes without their direct consent. In 1990, SNET began offering such PIC freezes for interstate long distance to its local exchange customers and recently increased its marketing of this offering to its long distance customers due to increased customer complaints. SNET believes its actions conform to its obligations under the Act because they balance the needs of consumers to protect their carrier choice and the ability of carriers to submit authorized changes to SNET as a local exchange carrier ("LEC").

Unauthorized PIC changes, also known as slamming, plague consumers in Connecticut, as they do in other parts of the country. In 1995, SNET received 60 slamming complaints filed with the Federal Communications Commission, and 1996 appears to be keeping pace, with 46 received to date. Many of these unauthorized changes result from the automated process wherein SNET accepts and executes carrier changes from interexchange carriers ("IXCs") via magnetic tape. Customers who have been slammed by such automatic carrier changes often hold SNET responsible for processing the change, even though SNET was not the IXC slamming the customer.

In order to protect customers from such unauthorized changes, SNET allows them to place a freeze on their lines so that PIC changes cannot be processed without specific authorization directly from the customer. Control of any PIC change is thereby returned to the customer. SNET recently began notifying its long distance customers that they can prevent unauthorized switching of their long distance provider via a service known as Carrier Choice Protection.

MCI mischaracterizes SNET's Carrier Choice Protection program in several respects. First, the offering is not new. SNET began offering such PIC freezes to consumers in 1990. Second, Carrier Choice Protection is not a condition of SNET All Distance service. MCI incorrectly alleges that consumers must commit to the Carrier Choice Protection after signing up for SNET long distance service. Carrier Choice Protection is optional and is independent of the choice made on the SNET letter of agency ("LOA"). Third, PIC freezes are available to customers of any IXC, not only SNET long distance customers. Other IXCs can and do similarly notify their customers about the availability of PIC freezes from SNET. Finally, MCI incorrectly alleges that the SNET PIC freeze will prevent a customer from changing its choice of local exchange carrier. A PIC freeze applies only to the choice of a long distance service provider.

The Carrier Choice Protection form attached to MCI's complaint was mailed to a limited number of customers during the week of April 26, 1996. In May, after the mailing, SNET immediately pulled all forms mentioning "local" service and removed the word "local" from the form as reflected in the Attachment. Subsequently, MCI brought one of these earlier forms which mentions "local" to the attention of SNET. We informed MCI that the form at issue was no longer used by SNET.

SNET believes that any confusion by the old form has been cured by the new one.¹ MCI's attempt to confuse the issues by conjecturing about SNET's intentions while admitting that "formalities appear to limit this restriction [PIC freeze] to 'long distance service'" should be ignored as irrelevant. The Carrier Choice Protection form plainly states that it will protect a customer's "SNET long distance" choice and that it authorizes "SNET to protect my phone line(s) that use SNET long distance." MCI unfairly attempts to juxtapose the SNET LOA and the Carrier Choice Protection form as though they were one and the same. The LOA's reference to "local exchange service" is unrelated to the Carrier Choice Protection form.

MCI appears to believe that choosing a consumer's carrier is the carrier's rather than the consumer's right. MCI states that SNET denies carriers "their right to switch consumers away from SNET in the ordinary course of conducting their businesses." However, SNET's Carrier Choice Protection does not deny carriers a right to switch, but simply prevents a carrier from

¹ Even prior to making the change on the form, SNET had no intent of using the form to "freeze" a customer's local exchange carrier choice. Contrary to MCI's contention, the solicitation's failure to indicate that it applied to local exchange service was not deceptive because it did not apply to local service.

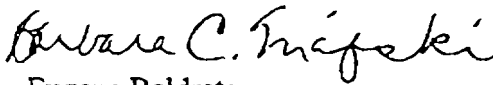
slamming a customer in violation of the Commission's rules. Consumers have the right to select their long distance carriers, and a PIC freeze ensures that that choice remains with the consumer. In light of Connecticut consumers' concerns about slamming, SNET's requirement that these PIC changes be received directly from consumers is neither onerous nor unreasonable under Section 201(b).

Under Section 201(b), SNET's Carrier Choice Protection is reasonable because it balances the need to protect consumers with an IXC's need for an automated PIC change process. Slamming poses a serious problem for consumers in Connecticut as is evident by the volume of complaints. PIC freezes address this problem.² For those consumers concerned about slamming, a PIC freeze provides the desired protection. IXCs can continue to make authorized PIC changes, but only with the concurrence of subscribers. According to a recent Common Carrier Bureau decision, such manual procedures do not violate the Act or rules because it does not interfere with a subscriber's ability to change carriers but simply takes the change out of the automated process.³ Similarly, SNET's Carrier Choice Protection program is reasonable under the Act.

With respect to the effect on competition, MCI bases its claim on the erroneous assumption that SNET's PIC freezes apply to local exchange service. This is factually wrong. SNET's Carrier Choice Protection is consistent with its duties under Section 251 of the Act.

In conclusion, SNET believes that its Carrier Choice Protection program is consistent with the Act and the Commission's rules. Any confusion caused by the form that used the term "local" has been clarified to MCI, and corrected in all subsequent versions of the form. We trust this response provides the information you require and satisfies your concerns.

Sincerely,


for Eugene Baldrate

Director-Regulatory Affairs and Public Policy

Enclosure

cc: Donald J. Elardo

² The Commission pointed to a PIC freeze program as a method to prevent slamming and "encourage[d] entities such as LECs to take additional steps that might help reduce slamming in their service area." Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Report and Order, 10 FCC Rcd 9560, 9574 n. 58 (1995).

³ RCI Long Distance, Inc. v. NYNEX, DA 96-1106 (Com.Car.Bur. July 11, 1996).

Authorization to Change/Confirm my Long Distance Carriers

I want SNET All Distance™ for my long distance service within
and beyond Connecticut.*

(Please type or print as it appears on your phone bill)

Name _____

Company Name (if applicable) _____

Street Address _____

City _____

State _____

Zip _____

Telephone (required) () _____

Additional telephone lines for this service:

1. _____

2. _____

3. _____

Signature* (required) _____

Date (required) _____

* With this signature, I authorize the following, as applicable:

- a change in my in-state long distance carrier from my current carrier to Southern New England Telephone;
- a change in my out-of-state long distance carrier from my current carrier to SNET America, Inc.;
- the unblocking of my carrier choice protection to make these switches possible;
- Southern New England Telephone to effect these changes on my behalf;
- Southern New England Telephone and SNET America, Inc. to be the sole providers for my long distance service within and beyond Connecticut (as indicated) for the phone numbers listed.

I understand that I may select per telephone number only one in-state long distance carrier and only one out-of-state long distance carrier. I also understand that SNET will waive any fee for this change and that a fee may apply for any later change I request.



We go beyond the call

© SNET 1994 BAC-RCL-644

Get Free Carrier Choice Protection from SNET

And make sure your phone lines can't be
switched without your say-so!

Did you know that your long distance carriers can be
changed without your direct request? To protect the
SNET long distance service you have, just complete and
return this form.

Life holds enough surprises without getting phone bills
from companies you've never asked to do business with!
With this free service, SNET makes sure you can't be
switched unless you know about it and have given your
permission first. It's your choice, and you don't want
someone else making it for you.



YES, I Want SNET
Carrier Choice Protection.

*Signature** (required) _____

Name (please print) _____

Company Name (if applicable) _____

Street Address _____

City _____ *State* _____ *Zip* _____

Date (required) _____

Telephone (required) () _____

Additional telephone lines for this service:

1. _____ 2. _____ 3. _____

* With this signature, I authorize SNET to protect my phone line(s)
that use SNET long distance service from being switched without my
express written or verbal consent. I understand that this protection
is free from SNET.

SNET

We go beyond the call

© SNET 1996 BAC-RGP-S06



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:)
)
Policies and Rules Pertaining to)
Local Exchange Carrier) RM - ____
"Freezes" on Consumer Choices of)
Primary Local Exchange or)
Interexchange Carriers)

To: The Commission

PETITION FOR RULEMAKING

MCI TELECOMMUNICATIONS CORPORATION

Mary J. Sisak
Mary L. Brown
1801 Pennsylvania Ave., N.W.
Washington, DC 20006
(202) 887-2605

Its Attorneys

Dated: March 18, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:)
)
Policies and Rules Pertaining to)
Local Exchange Carrier) RM - ____
"Freezes" on Consumer Choices of)
Primary Local Exchange or)
Interexchange Carriers)

To: The Commission

PETITION FOR RULEMAKING

MCI Telecommunications Corporation (MCI), pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. §1.401, hereby requests that the Commission institute a rulemaking to regulate the solicitation, by any carrier or its agent, of primary interexchange carrier (PIC) "freezes" or other carrier restrictions on the switching of a consumer's primary interexchange (interLATA and intraLATA toll) and local exchange carrier.

A "PIC freeze" is a product or service offered by a local exchange carrier (LEC) to its customers, whereby the LEC promises not to change or modify the customer's service without direct instruction from the customer himself. Although incumbent LECs claim to offer this capability as protection against unauthorized conversion of a customer's service (commonly referred to as "slamming"), the reality is that they have employed PIC freezes as a strategic tool to lock in their own customers and to impede effective competition, particularly in the local and

intraLATA toll markets they currently dominate.

Incumbents misuse PIC freezes during the vulnerable transition from monopoly to competition to shield their own customer base from competition and to refuse to implement carrier changes that customers want. A PIC freeze acts as a block to the typical method of executing customer switches of service, which today overwhelmingly occurs as follows: 1) a carrier makes a sale to a customer; 2) the carrier obtains the customer's authorization either verbally or in writing to switch his service; 3) the carrier may verify the sale through third party verification and 4) the carrier acts as the agent of the customer and implements that authorization by sending a carrier-to-carrier electronic feed to the LEC which accomplishes the switch.

The mechanics of enrolling in "PIC freeze" programs vary by LEC, as do the methods customers must use to release those restrictions. Some LECs permit customers to obtain and release a PIC freeze through verbal telephonic authorization. Some require written enrollment and release authorization. Some LECs even require that, to release authorization, the customer use only a specific form obtained from the LEC-- other written forms of customer authorization will be rejected.

Commission action is essential, especially during the critical transition from monopoly to competition in local and intraLATA toll services. Competition can best develop when consumer choice is easily accommodated -- without the interpositioning of processes and procedures that unreasonably frustrate or foreclose this choice. The cumbersome PIC freeze processes implemented by the LECs frustrate consumer choice and the development of competition.

The passage of the Telecommunications Act of 1996 (1996 Act)¹ proposes to change the landscape of the local exchange and interexchange telecommunications markets forever. The 1996 Act is intended to bring the benefits of competition to local markets, and to permit the Bell Operating Companies (BOCs) to provide interexchange service when they satisfy the requirements of Section 271. The potential consequence of this development is that a single carrier will be able to serve consumers for both their local and long distance telecommunications needs. However, for this to happen it is essential that the Commission adopt rules that provide for the "level playing field" so essential to the development of effective competition. This is because one of the markets -- local exchange -- is a monopoly, and would-be competitors will need to access consumers through necessary contacts with the monopoly local exchange carriers.

The potential dangers posed by an incumbent LEC's misuse of its monopoly power in the context of soliciting PIC freezes are graphically demonstrated by the recent practices of Ameritech and Southern New England Telephone Company (SNET). Ameritech has been ordered to implement intraLATA toll dialing parity in Michigan, Illinois, and Wisconsin. SNET, which is competing in the interLATA and intraLATA market, also was required to implement intraLATA toll dialing parity for all of its Connecticut customers. Not coincidentally, when these carriers began to face more effective competition in the markets they dominate, they began aggressively to make it harder for their customers to change carriers for intraLATA and interLATA toll services through the use of "PIC freezes".²

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996).

² Data available to MCI indicates that in recent months SNET and Ameritech have relied on PIC freezes and other similar anti-competitive tactics to reject between 10% and 20% of all orders submitted by MCI for a change in carrier. In MCI's case, virtually all of these orders have

The ostensible purpose of PIC freezes is to prevent a customer's long distance carrier from being changed without his consent -- i.e., to prevent the market abuse known as "slamming". Despite the superficial customer-oriented spin from the LECs, it is apparent that the true purpose behind these efforts is to get PIC freeze commitments from customers for all of the customer's telecommunications services before real intraLATA and local competition emerges, so that when competition becomes available, carrier switches will face an additional hurdle. The LECs want to impose additional barriers that will convince many customers that it simply is not worth the effort to switch.

The reality is that incumbent LECs strategically market PIC freezes as a device to shield their own customer base from competition; that incumbent LECs use PIC freezes to refuse to implement carrier changes to which a customer has already provided valid consent; and that customers are often not adequately informed of the significance of a PIC freeze.³ This strategic use of PIC freezes belies the claim that incumbent LECs are using PIC freezes to protect customers from slamming. In fact, the incumbent LECs are concerned about protecting their own local, intraLATA and interLATA customer base, and their PIC freeze practices are an additional tool used to justify the rejection of tens of thousands of valid orders by their existing

been verified by independent third party verification. As a result, these are clearly valid sales that have been rejected for no legitimate reason. SNET and Ameritech rejection rates are significantly higher than the rates of other incumbent LECs. It seems quite likely, however, that other incumbent LECs would come to use PIC freezes more aggressively as they are required to implement intraLATA toll dialing parity and to the extent that the BOCs obtain authority to provide in-region interLATA services.

³ MCI believes that a majority of consumers who have "PIC freezes" on their accounts either do not know these restrictions are in place, or never understood them in the first place.

customers to switch to a more competitive company.⁴

Ameritech, for example, was recently sanctioned by the Michigan Public Service Commission (MPSC) for deceptively promoting PIC freezes to its customers just before the implementation of intraLATA equal access competition.⁵ The MPSC determined that Ameritech's campaign deceptively urged its customers to sign up for "PIC Protection" without making clear that the "service" would create obstacles for customers to change not only their interLATA provider but also their intraLATA and local service providers.⁶ The MPSC also ruled that the timing of Ameritech's deception impeded the imminent intraLATA presubscription process: "[i]t is anticompetitive because it created new hurdles to the exercise of the customer's decision to change providers just as alternatives were becoming available."⁷

Similarly, SNET has been aggressively promoting PIC freezes -- and only to its own long distance customers -- as a "free service" it calls "Carrier Choice Protection", without accurately explaining to those customers what the "service" entails. In one direct mail solicitation, SNET encouraged its customers to sign up for both "SNET All Distance" service, defined as "local and long distance service within and beyond Connecticut", and "Carrier Choice Protection." The text

⁴ Data available to MCI indicates that in recent months SNET has used PIC freezes to reject approximately 2,000 MCI interLATA orders and 1,000 MCI intraLATA orders each month.

⁵ In the Matter of the Complaint of Sprint Communications Company, L.P. against Ameritech Michigan, Case No. U-11038, decided August 1, 1996.

⁶ *Id.* at 5-7.

⁷ *Id.* at 12.

of the solicitation reads in part:⁵

Did you know that your local and long distance carriers can be changed without your direct request? To protect the SNET long distance service you have, just complete and return this form.

Life holds enough surprises without getting phone bills from companies you've never asked to do business with! With this free service, SNET makes sure you can't be switched unless you know about it and have given your permission first. It's your choice, and you don't want someone else making it for you.

* With this signature, I authorize SNET to protect my phone line(s) that use SNET long distance service from being switched without my express written or verbal consent. I understand that this service is free from SNET.

Nowhere does this solicitation contain the essential information that SNET will rely on a customer's authorization to subsequently reject a valid request for a change of carrier, a request conveyed by the customer's ~~express~~ consent, so long as that consent is not conveyed directly to SNET. Thus, a customer who clearly and expressly consents to have his carrier changed, during a telephone conversation with a sales representative, for example, and then consents again through the Commission-approved procedure of independent third party verification, nevertheless will have his order rejected by SNET on the basis of a deceptively acquired PIC freeze. Worse still, a customer could not possibly know at the time he requests a change in carrier that SNET's use of the customer's PIC freeze authorization will prevent his clearly expressed choice of a different carrier from being implemented.

Equally important, the PIC freeze authorization contained in SNET's solicitation, by its

⁵ A similarly worded solicitation formed the basis for an informal complaint filed by MCI against SNET in July, 1996. Letter from Donald J. Elardo, MCI to John Muleta, FCC dated July 23, 1996. The complaint is reflected in File No. 96-09734.